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No. 89-189

In The

Supreme Court of the United States

October Term, 1989

SAMUEL A. LEWIS, Director, Arizona Department of Corrections, and DONALD WAWRZASZEK, Superintendent, Arizona State Prison,

Petitioners,

vs.

JIMMIE WAYNE JEFFERS,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY BRIEF

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QUESTION PRESENTED

Where a federal court has determined that a state court has adopted a constitutionally narrow definition of an aggravating circumstance in a capital case, may the federal court make a de novo review of the evidence supporting the state court's finding of that aggravating circumstance?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CASES AND AUTHORITIES iii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 3

ARGUMENT

THE NINTH CIRCUIT ERRONEOUSLY SET ASIDE RESPONDENT'S DEATH SENTENCE BASED ON ITS FINDING THAT THE EVIDENCE DID NOT SUPPORT THE AGGRAVATING CIRCUMSTANCE THAT THE MURDER WAS "ESPECIALLY HEINOUS AND DEPRAVED." 4

CONCLUSION 13

APPENDIX A A-1

TABLE OF CASES AND AUTHORITIES

Page

CASES

Godfrey v. Georgia,
446 U.S. 420
100 S. Ct. 1759
64 L. Ed. 2d 398 (1980) 8, 10, 12

Lowenfield v. Phelps,
484 U.S. 231
108 S. Ct. 546
48 L. Ed. 2d 568 (1988) 7

Maynard v. Cartwright,
486 U.S. 356
108 S. Ct. 1853
100 L. Ed. 2d 372 (1988) 8, 9, 12

Pulley v. Harris,
465 U.S. 37
104 S. Ct. 871
79 L. Ed. 2d 29 (1984) 8

State v. Gretzler,
135 Ariz. 42
659 P.2d 1 (1983) 8, 11

State v. Rockwell,
161 Ariz. 5
775 P.2d 1069 (1989) 10

State v. Smith,
131 Ariz. 29
638 P.2d 696 (1982) 10

State v. Vickers,
159 Ariz. 532
768 P.2d 1177 (1989) 10

State v. Watson,
129 Ariz. 60
628 P.2d 943 (1978) 10

TABLE OF CASES AND AUTHORITIES – Continued

Page

AUTHORITIES

Arizona Revised Statutes Annotated

§ 13-452 7

§ 13-455 7

§ 13-456 7

§§ 13-1102 to -1105 7

Arizona Rules of Criminal Procedure Rule 32.5(b)(2) 11

Louisiana Revised Statutes Annotated § 14:29 (West 1986) 7

Rules of the Supreme Court Rule 14.1(a) 6

STATEMENT OF THE CASE

Respondent's guilt is not an issue in this case. In his recitation of the facts, however, respondent seems unaware of this. He portrays himself as the faithful and long-suffering lover of Penelope Cheney. He portrays Ms. Cheney as a despicable person who deserved to be killed. Respondent also attacks the credibility of the state's witnesses,[1] suggests that Ms. Cheney's death was accidental,[2] and fails to mention his attempt to hire a man to kill Ms. Cheney. Respondent's heavy reliance on his own trial testimony is misplaced because the jury necessarily rejected that testimony by returning guilty verdicts.

In the Ninth Circuit, respondent made numerous attacks on his death sentence. Two of those attacks were that the especially heinous or depraved aggravating circumstance "is unconstitutionally vague and overbroad" on its face and that the circumstance was vague and overbroad as applied to him. (Opening Brief of Appellant at 50-58.) The Ninth Circuit rejected respondent's claim that the circumstance was "unconstitutionally vague and overbroad" on its face:

> His argument that the statute is void on its face is foreclosed by our decision in *Chaney v. Lewis*, 801 F.2d 1191, 1194-96 (9th Cir. 1986), *cert. denied*, 107 S. Ct. 1911 (1987). There, we rejected a similar challenge to the same statute, pointing out that "[a]lthough the statutory language is broad, as any murder could be considered cruel, heinous, or depraved, the Arizona Supreme

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[1] Brief of Respondent at 4, fn. 2; *Id.* at 5-6, fn. 3.

[2] *Id.* at 6, fn. 4.

Court need not construe the statute open-endedly." *Id.* at 1195.

. . . .

In *Chaney*, we also stated that "[t]he Arizona Supreme Court appears to have sufficiently channeled sentencing discretion to prevent arbitrary and capricious capital sentencing decisions." *Chaney*, 801 F.2d at 1195. Finally, we held that the death sentence imposed upon Chaney was consistent with the Arizona law as established by the Arizona Supreme Court: the murder was cruel because the victim suffered greatly, and was depraved because Chaney's helpless victim (a sheriff's deputy) was shot in the back when Chaney could have made his escape without again shooting the victim. *Id.*

While Chaney establishes that the Arizona statute is not void on its face and is capable of constitutional application, it naturally does not answer the question whether the Arizona statute was constitutionally applied to Jeffers in this case.

(Appendix to Petition for Writ of Certiorari at A-24 to A-26, emphasis added.) The Ninth Circuit then proceeded to find that the circumstance was vague as applied to respondent. (*Id.* at A-26 to A-45.)[3]

Respondent filed no petition for rehearing in the Ninth Circuit. In his response to the state's petition for

[3] The Ninth Circuit rejected two of respondent's other sentencing issues (biased sentencing judge and jury determinations of aggravating and mitigating circumstances) and declined to rule on the remainder. (*Id.* at A-21 to A-23, A-45, fn. 11.)

rehearing and suggestion for rehearing en banc, respondent acknowledged that the Ninth Circuit had rejected his "overbroad on its face" claim:

> The instant case does *not* involve the broad question of whether the aggravating circumstance "especially cruel, heinous or depraved" is facially unconstitutional. The decision of the panel held that this issue was "foreclosed by our decision in *Chaney v. Lewis*, 801 F.2d 1191, 1194-96 (9th Cir. 1986). . . ."

(Petitioner-Appellant's Response to Petition for Rehearing with Suggestion for Rehearing En Banc at 4, emphasis in original.) The Ninth Circuit deferred consideration of the petition for rehearing "pending a further decision of this court, sitting en banc, in *Adamson v. Ricketts*. . . ." (Order, filed Mar. 30, 1988.) When the Ninth Circuit later denied the petition for rehearing and rejected the suggestion for a rehearing en banc, it made no reference to *Adamson* and did not modify the panel's opinion.

Respondent filed no cross-petition for writ of certiorari. In responding to the state's petition, respondent made no claim that the Ninth Circuit had wrongly decided his "overbroad on its face" issue or that the Ninth Circuit had actually decided that issue in his favor.

SUMMARY OF ARGUMENT

Respondent's brief serves to emphasize the importance of the issue in this case. The position of respondent and the Ninth Circuit is that, where a state inmate brings a collateral attack on his death sentence, the federal courts are empowered and required to scrutinize in

detail, including comparing the case with all other capital cases from that state, every step taken by the state court in imposing the death sentence.

Petitioners maintain that the scope of federal review is not so broad. In this case, where it had concluded that Arizona had adopted a constitutionally adequate narrowing construction of the especially heinous or depraved aggravating circumstance, the Ninth Circuit exceeded its authority by holding that the evidence did not support the state court's finding that the murder was especially heinous and depraved. That is the issue upon which this Court granted certiorari. Respondent's labelling of the issue as "spurious" does not change the facts of this case.

ARGUMENT

THE NINTH CIRCUIT ERRONEOUSLY SET ASIDE RESPONDENT'S DEATH SENTENCE BASED ON ITS FINDING THAT THE EVIDENCE DID NOT SUPPORT THE AGGRAVATING CIRCUMSTANCE THAT THE MURDER WAS "ESPECIALLY HEINOUS AND DEPRAVED."

A. Respondent Is Not Entitled to Relief on His Claim that Arizona's Especially Heinous and Depraved Aggravating Circumstance Is Unconstitutional on Its Face.

Respondent devotes the major portion of his brief to attacking the facial validity of the especially heinous and depraved aggravating circun stance. He does this despite the fact that the Ninth Circui rejected this claim, that he never sought a rehearing in the Ninth Circuit, and that he never cross-petitioned for certiorari.

Respondent presents a number of theories to support his claim that this issue, which this Court did not grant certiorari on, is properly before this Court. He first asserts that the Ninth Circuit panel never held that the aggravating circumstance was not void on its face. The words of the opinion contradict that notion. (Appendix to Petition for Writ of Certiorari at A-24 to A-26.) Respondent acknowledged this in his response to the state's petition for rehearing. (Petitioner-Appellant's Response to Petition for Rehearing with Suggestion for Rehearing En Banc at 4.)

He next argues that, in denying the state's petition for rehearing, the Ninth Circuit modified the panel's opinion to hold that the circumstance was void on its face. This is sheer confabulation. The order denying the petition for rehearing makes no mention of this issue and in no way modifies the panel's opinion. If the Ninth Circuit had intended to do anything other than deny the petition for rehearing it would have said so.

Respondent also asserts that he may defend the Ninth Circuit's judgment on any ground which the law and the record permit, provided the asserted ground would not "expand the relief" which has been granted. Thus, according to respondent's logic, he is entitled to raise in this Court any of the sentencing issues he presented in the Ninth Circuit, including those the Ninth Circuit declined to rule on, because they would not "expand the relief" granted by the Ninth Circuit. The relief granted by the Ninth Circuit was that respondent's death sentence was set aside. Respondent's "facial invalidity" ground and many of his other sentencing issues would "expand the relief" granted by striking

down the entire especially heinous, cruel or depraved circumstance or the entire death penalty statute. Further, respondent does not account for Rule 14.1(a), Rules of the Supreme Court, which provides in pertinent part:

> The statement of any question presented [in a petition for writ of certiorari] will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition, or fairly included therein, will be considered by the Court.

The "overbroad as applied" issue is a subsidiary question fairly included in the "overbroad on its face" issue, not vice versa.

Even assuming that respondent's "overbroad on its face" issue is before this Court, it does not merit relief from this Court. Respondent's analysis presumes that the constitutionally required "narrowing function" of a state's capital punishment scheme must take place at the sentencing phase. This Court has held otherwise:

> [T]he narrowing function required for a regime of capital punishment may be provided in either of these two ways: The legislature may itself narrow the definition of capital offenses, as Texas and Louisiana have done, so that the jury finding of guilt responds to this concern, or the legislature may more broadly define capital offenses and provide for narrowing by jury findings of aggravating circumstances at the penalty phase.
>
> . . . .
>
> There is no question but that the Louisiana scheme narrows the class of death-eligible murderers and then at the sentencing phase allows for the consideration of mitigating circumstances and the exercise of discretion. The Constitution requires no more.

Lowenfield v. Phelps, 108 S. Ct. 546, 555 (1988) (citations omitted).

Louisiana has established five grades of homicide while Arizona has established four. *Compare* La. Rev. Stat. Ann. § 14:29 (West 1986) and Ariz. Rev. Stat. Ann. §§ 13-1102 to -1105.[4] Both states restrict application of the death penalty to those convicted of first-degree murder. A comparison of Louisiana's definition of first-degree murder with Arizona's shows that, while the classes are not congruent, each state significantly narrows the class of murderers eligible for the death penalty. While some defendants who would be guilty of first-degree murder in Arizona would not be guilty of first-degree murder in Louisiana, others who would be guilty in Louisiana would not be in Arizona. Petitioners submit that Arizona, just as much as Louisiana, complies with the required narrowing function by its narrow definition of capital offenses. Then, by its sentencing scheme, Arizona goes on to provide a constitutional method of distinguishing those who receive the death penalty from those who do not.

In addition, respondent's concept of the appropriate scope of federal review in determining whether an aggravating circumstance performs the required narrowing function finds no support in this Court's decisions. In

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[4] Slightly different versions of these statutes were in effect at the time of respondent's trial. *See* former Ariz. Rev. Stat. Ann. §§ 13-452, -455, and -456.

neither *Maynard v. Cartwright*, 486 U.S. 356 (1988) nor *Godfrey v. Georgia*, 446 U.S. 420 (1980), did this Court perform the case-by-case comparison or proportionality review that respondent claims is required here. The problem in *Maynard* was that courts had adopted no narrowing construction of the "especially heinous, atrocious, or cruel" aggravating circumstance, which left the sentencing jury with unfettered discretion. The problem in *Godfrey* was that, while the Georgia courts had previously adopted a narrowing construction of their "outrageously vile" circumstance, they failed to apply it in Godfrey's sentencing.

Arizona, unlike Oklahoma in *Maynard*, has adopted a narrowing construction of the "especially heinous, and depraved" aggravating circumstance. *State v. Gretzler*, 659 P.2d 1, 13 (Ariz.), *cert. denied*, 461 U.S. 971 (1983). Arizona, unlike Georgia in *Godfrey*, applied that narrowing construction to respondent. (Joint Appendix at 59-63.) Neither *Maynard* nor *Godfrey* authorizes the wholesale proportionality review of other Arizona decisions in which respondent indulges.

Respondent's proportionality review analysis implies that a capital sentencing scheme must be foolproof. This Court has held otherwise:

> Any capital sentencing scheme may occasionally produce aberrational outcomes. Such inconsistencies are a far cry from the major systemic defects identified in *Furman*. As we have acknowledged in the past, "there can be 'no perfect procedure for deciding in which cases governmental authority should be used to impose death.' "

Pulley v. Harris, 465 U.S. 37, 54 (1984).

Respondent argues that Arizona's construction of the terms is not sufficiently narrow because they are not read conjunctively with the term "especially cruel." (Brief of Respondent at 46-48.) As this Court stated in *Maynard*:

> We also do not hold that some kind of torture or serious physical abuse is the only limiting construction of the heinous, atrocious, or cruel aggravating circumstance that would be constitutionally acceptable.

Maynard v. Cartwright, 108 S. Ct. at 1859-60. Arizona's construction, though not conjunctive, sufficiently narrows the meaning of the terms.

He also complains that Arizona's construction of the "especially heinous and depraved" circumstances is merely a "dressed up" version of the same facts (motivation, premeditation, and deliberation) that established his guilt of first-degree murder. (Brief of Respondent at 81-82.) Respondent apparently sees no distinction between a defendant who merely premeditatedly kills his girlfriend by overdosing her with heroin and a defendant who, like respondent, does the same but also strangles her with his hands and a belt, climbs on top of her and beats and curses her, forces another person to inject her with more heroin, and takes photographs of the other person doing so. The distinction between the two is obvious and Arizona's construction properly takes note of that distinction.

Respondent's brief and appendix imply that the Arizona Supreme Court has not constitutionally discharged its review function. A review of its case law shows that the Arizona Supreme Court exercises great care in carrying out its responsibilities. (*See* Appendix A.) The state

court has reviewed 155 death sentences arising out of 147 cases.[5] Of the 155 convictions and death sentences reviewed, the state court has affirmed the conviction and sentence in 85 instances, remanded for new trials in 24 instances, affirmed the conviction but reduced the sentence to life in 20 instances, and remanded for resentencing in 26 instances.

The Arizona Supreme Court reverses death sentences at a rate of 45.2 percent, significantly higher than the 35.6 percent "historic [criminal] reversal rate of state supreme courts." *Godfrey v. Georgia*, 446 U.S. at 453 (White, J., dissenting). There are a number of reasons for this higher rate. First, the Arizona Supreme Court subjects death penalty cases to a higher degree of scrutiny.[6] Second, the court independently, as a trier-of-fact, determines the existence of aggravating and mitigating circumstances.[7] Third, the court independently determines whether it believes the death penalty is appropriate.[8] Fourth, Arizona provides the capital defendant with an attorney in

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[5] The difference in the total number of sentences and the total number of reported cases occurs because some of the cases involve multiple convictions of first-degree murder and multiple death sentences.

[6] *State v. Vickers*, 768 P.2d 1177, 1182 (Ariz. 1989) (because of sentence imposed, Court considers merits of claim not presented to trial court).

[7] *State v. Smith*, 638 P.2d 696, 700-01 (Ariz. 1982) (Court reviews each case de novo, as a trier-of-fact, to assure the correct application of aggravating circumstances).

[8] *State v. Rockwell*, 775 P.2d 1069, 1080 (Ariz. 1989); *State v. Watson*, 628 P.2d 943, 946 (Ariz. 1978).

all phases of the review process, including post-conviction relief proceedings.[9]

The Arizona Supreme Court applies the same careful review to cases involving the "especially heinous, cruel or depraved" aggravating circumstance. Of the 147 death penalty cases it has reviewed, 61 have involved this circumstance. (*See* Appendix A.) Of those 61 cases, 40 came after the supreme court narrowed the circumstance in *Gretzler*. In 32 of the 40 cases, the trial courts found the "heinous and depraved" circumstance. The supreme court reversed 6 of those findings. (*See* Appendix A.) In 35 of the 40 cases, the trial courts found the "cruel" circumstance. The supreme court reversed 9 of those findings. This shows that the Arizona Supreme Court properly exercises its review function and does not automatically affirm the trial court's sentencing decisions.

B. The Ninth Circuit Applied an Incorrect Standard of Review in Determining that the "Especially Heinous and Depraved" Aggravating Circumstance Could Not Be Constitutionally Applied in this Case.

Respondent's position here is that the "narrowing construction" analysis that federal courts must apply to a state court's definition of an aggravating circumstance applies equally to the state court's determination that the aggravating circumstance exists in a particular case. Respondent therefore engages in a lengthy review of

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[9] Rule 32.5(b)(2), Ariz. R. Crim. P.

Arizona cases in which the "especially heinous and depraved" circumstance has and has not been applied and, without benefit of the full record of those cases, compares them to the facts in this case.

No decision by this Court authorizes such a review. In *Maynard*, this Court did not base its decision to set aside the death sentence on a comparison of Maynard's conduct with that of any other defendant in Oklahoma. The setting aside of Maynard's sentence was based on Oklahoma's failure to define the aggravating circumstance and the failure to instruct the sentencing jury on the meaning of the circumstance. Similarly, this Court did not set aside the death sentence in *Godfrey* based on its conclusion that Godfrey's conduct fell below that of other defendants. The *Godfrey* decision was based on the failure of the sentencing jury and the Georgia Supreme Court to apply the narrowed construction of the aggravating circumstance to Godfrey's conduct.

Respondent adorns his argument with the rainment of a "narrowing construction" analysis. What he is actually saying is that a federal court has the power to independently review the facts supporting a state court's finding of an aggravating circumstance and come to its own conclusion regarding whether that circumstance exists. Petitioners submit that this exceeds the scope of federal review.

CONCLUSION

Once the Ninth Circuit determined that Arizona had narrowly construed its "especially heinous and depraved" aggravating circumstance, it should not have independently reviewed the evidence supporting the finding of the circumstance. A federal court may not substitute its judgment for that of the state court in this manner. Therefore, petitioners ask this Court to reverse that portion of the Ninth Circuit's decision that set aside respondent's death sentence.

Respectfully submitted,

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APPENDIX A

ARIZONA DEATH PENALTY CASES
1975 to January 23, 1990

KEY:

a. Cases where Arizona Supreme Court reviewed findings of heinous, cruel or depraved

b. Cases after *Gretzler* where cruelty was found

c. Cases after *Gretzler* where heinous and depraved was found

d. Cases after *Gretzler* where finding of cruelty reversed

e. Cases after *Gretzler* where finding of heinous and depraved reversed

CASES

1. *State v. Verdugo*, 112 Ariz. 288, 541 P.2d 388 (1975).

   Conviction affirmed, sentence reduced to life.

2. *State v. Ceja*, 113 Ariz. 39, 546 P.2d 6 (1976).

   Conviction reversed, remanded for new trial.

3. *State v. Murphy*, 113 Ariz. 416, 555 P.2d 1110 (1976).

   Conviction affirmed, sentence reduced to life.

4. *State v. Watson*, 114 Ariz. 1, 559 P.2d 121 (1976), *cert. denied*, 430 U.S. 986 (1977).

Conviction affirmed, remanded for resentencing.

5. *State v. Lee*, 114 Ariz. 101, 559 P.2d 657 (1976).

Conviction affirmed, remanded for resentencing.

6. *State v. Richmond*, 114 Ariz. 186, 560 P.2d 41 (1976), *cert. denied*, 433 U.S. 915 (1977).

Conviction and sentence affirmed.

(a) 7. *State v. Blazak*, 114 Ariz. 199, 560 P.2d 54 (1977).

Conviction and sentence affirmed.

8. *State v. Jordan*, 114 Ariz. 452, 561 P.2d 1224 (1976), *vacated*, 438 U.S. 911 (1978).

Conviction and sentence affirmed.

(a) 9. *State v. Knapp*, 114 Ariz. 531, 562 P.2d 704 (1977), *cert. denied*, 435 U.S. 908 (1978).

Conviction and sentence affirmed.

10. *State v. Holsinger*, 115 Ariz. 89, 563 P.2d 888 (1977).

Conviction and sentence affirmed.

(a) 11. *State v. Ceja*, 115 Ariz. 413, 565 P.2d 1274, *cert. denied*, 434 U.S. 975 (1977).

Conviction and sentence affirmed.

12. *State v. Doss*, 116 Ariz. 156, 568 P.2d 1054 (1977).

Conviction affirmed, sentence reduced to life.

13. *State v. Treadaway*, 116 Ariz. 163, 568 P.2d 1061 (1977).

Conviction reversed, remanded for new trial.

(a) 14. *State v. Bishop*, 118 Ariz. 263, 576 P.2d 122, *vacated*, 439 U.S. 810 (1978).

Conviction and sentence affirmed.

15. *State v. Arnett*, 119 Ariz. 38, 579 P.2d 542 (1978).

Conviction and sentence affirmed.

16. *State v. Evans*, 120 Ariz. 158, 584 P.2d 1149 (1978).

Conviction affirmed, remanded for resentencing.

17. *State v. Steelman*, 120 Ariz. 301, 585 P.2d 1213 (1978).

Conviction affirmed, remanded for resentencing.

(a) 18. *State v. Watson*, 120 Ariz. 441, 586 P.2d 1253 (1978), *cert. denied*, 440 U.S. 924 (1979).

Conviction affirmed, remanded for resentencing.

19. *State v. Morales*, 120 Ariz. 517, 587 P.2d 236 (1978).

Conviction reversed, remanded for new trial.

20. *State v. Melendez*, 121 Ariz. 1, 588 P.2d 294 (1978).

Conviction reversed, remanded for new trial.

21. *State v. Valencia*, 121 Ariz. 191, 589 P.2d 434 (1979).

Conviction affirmed, remanded for resentencing.

22. *State v. Edwards*, 122 Ariz. 206, 594 P.2d 72 (1979), *rev'd*, 451 U.S. 477 (1981).

Conviction affirmed, remanded for resentencing.

23. *State v. Smith (J.C.)*, 123 Ariz. 231, 599 P.2d 187 (1979).

Convictions affirmed, remanded for resentencing.

24. *State v. Carriger*, 123 Ariz. 335, 599 P.2d 788 (1979), *cert. denied*, 444 U.S. 1049 (1980).

Conviction and sentence affirmed.

(a) 25. *State v. Brookover*, 124 Ariz. 38, 601 P.2d 1322 (1979).

Conviction affirmed, sentence reduced to life.

26. *State v. Valencia*, 124 Ariz. 139, 602 P.2d 807 (1979).

Conviction affirmed, remanded for resentencing.

(a) 27. *State v. Lujan*, 124 Ariz. 365, 604 P.2d 629 (1979).

Conviction affirmed, sentence reduced to life.

28. *State v. Evans*, 124 Ariz. 526, 606 P.2d 16, *cert. denied*, 449 U.S. 891 (1980).

Resentencing affirmed.

29. *State v. Dunlap*, 125 Ariz. 104, 608 P.2d 41 (1980).

Conviction reversed, remanded for new trial.

30. *State v. Robison*, 125 Ariz. 107, 608 P.2d 44 (1980).

Conviction reversed, remanded for new trial.

31. *State v. Arnett*, 125 Ariz. 201, 608 P.2d 778 (1980).

Resentencing affirmed.

(a) 32. *State v. Mata (Luis)*, 125 Ariz. 233, 609 P.2d 48, *cert. denied*, 449 U.S. 938 (1980).

Conviction and sentence affirmed.

(a) 33. *State v. Madsen*, 125 Ariz. 346, 609 P.2d 1046, *cert. denied*, 449 U.S. 873 (1980).

Conviction affirmed, sentence reduced to life.

34. *State v. Smith (Sylvester)*, 125 Ariz. 412, 610 P.2d 46 (1980).

Conviction and sentence affirmed.

35. *State v. Knapp*, 125 Ariz. 503, 611 P.2d 90 (1979).

Resentencing affirmed.

(a) 36. *State v. Steelman*, 126 Ariz. 19, 612 P.2d 475, *cert. denied*, 449 U.S. 913 (1980).

Resentencing affirmed.

(a) 37. *State v. Ceja*, 126 Ariz. 35, 612 P.2d 491 (1980).

Resentencing affirmed.

38. *State v. Gretzler*, 126 Ariz. 60, 612 P.2d 1023 (1980).

Conviction affirmed, remanded for resentencing.

39. *State v. Jordan*, 126 Ariz. 283, 614 P.2d 825, *cert. denied*, 449 U.S. 986 (1980).

Resentencing affirmed.

(a) 40. *State v. Clark*, 126 Ariz. 428, 616 P.2d 888, *cert. denied*, 449 U.S. 1067 (1980).

Conviction and sentence affirmed.

41. *State v. McDaniel*, 127 Ariz. 13, 617 P.2d 1129 (1980).

Conviction reversed, remanded for new trial.

42. *State v. McVay*, 127 Ariz. 450, 622 P.2d 9 (1980).

Conviction reversed, remanded for new trial.

(a) 43. *State v. Bishop*, 127 Ariz. 531, 622 P.2d 478 (1980).

Resentencing affirmed.

44. *State v. Greenawalt*, 128 Ariz. 150, 624 P.2d 828, *cert. denied*, 454 U.S. 882 (1981).

Conviction and sentence affirmed.

45. *State v. Watson*, 129 Ariz. 60, 628 P.2d 943 (1981), *cert. denied*, 456 U.S. 981 (1982).

Conviction affirmed, sentence reduced to life.

(a) 46. *State v. Vickers*, 129 Ariz. 506, 633 P.2d 315 (1981) Conviction and sentence affirmed.

(a) 47. *State v. Tison (Ricky)*, 129 Ariz. 526, 633 P.2d 335 (1981), *cert. denied*, 459 U.S. 882 (1982).

Conviction and sentence affirmed.

(a) 48. *State v. Tison (Raymond)*, 129 Ariz. 546, 633 P.2d 355 (1981), *cert. denied*, 459 U.S. 882 (1982).

Conviction and sentence affirmed.

49. *State v. Schad*, 129 Ariz. 557, 633 P.2d 366 (1981), *cert. denied*, 455 U.S. 983 (1982).

Conviction and sentence affirmed.

50. *State v. Britson*, 130 Ariz. 380, 636 P.2d 628 (1981).

Conviction and sentence affirmed.

51. *State v. Rumsey*, 130 Ariz. 427, 636 P.2d 1209 (1981).

Conviction affirmed, life sentence vacated, remanded for resentencing.

(a) 52. *State v. Smith (J.C.)*, 131 Ariz. 29, 638 P.2d 696 (1981).

Resentencings affirmed.

(a) 53. *State v. Ortiz*, 131 Ariz. 195, 639 P.2d 1020 (1981), *cert. denied*, 456 U.S. 984 (1982).

Conviction and sentence affirmed.

54. *State v. Emery*, 131 Ariz. 493, 642 P.2d 838 (1982).

Conviction reversed, remanded for new trial.

(a) 55. *State v. Blazak*, 131 Ariz. 598, 643 P.2d 694, *cert. denied*, 459 U.S. 882 (1982).

Resentencing affirmed.

56. *State v. Valencia*, 132 Ariz. 248, 645 P.2d 239 (1982).

Conviction affirmed, sentence reduced to life.

(a) 57. *State v. Poland*, 132 Ariz. 269, 645 P.2d 784 (1982).

Conviction reversed, remanded for new trial.

58. *State v. Carriger*, 132 Ariz. 301, 645 P.2d 816 (1982).

Sentence vacated, remanded for resentencing.

59. *State v. McLoughlin*, 133 Ariz. 458, 652 P.2d 531 (1982).

Conviction reversed, remanded for

(a,b,c) 60. *State v. Gerlaugh*, 134 Ariz. 164, 654 P.2d 800 (1982).

135 Ariz. 89, 659 P.2d 642 (1983).

Conviction and sentence affirmed.

(a) 61. *State v. Woratzeck*, 134 Ariz. 452, 657 P.2d 865 (1982).

Conviction and sentence affirmed.

(a) 62. *State v. Gretzler*, 135 Ariz. 42, 659 P.2d 1, *cert. denied*, 461 U.S. 971 (1983).

Resentencing affirmed.

(a,b,d) 63. *State v. Zaragoza*, 135 Ariz. 63, 659 P.2d 22, *cert. denied*, 462 U.S. 1124 (1983).

Conviction and sentence affirmed.

(a,d,e) 64. *State v. Graham*, 135 Ariz. 209, 660 P.2d 460 (1983).

Conviction affirmed, sentence reduced to life.

(a,c,d) 65. *State v. Jeffers*, 135 Ariz. 404, 661 P.2d 1105, *cert. denied*, 464 U.S. 865 (1983).

Conviction and sentence affirmed.

(a,b) 66. *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983).

Conviction affirmed, remanded for resentencing.

67. *State v. McMurtrey*, 136 Ariz. 93, 664 P.2d 637, *cert. denied*, 464 U.S. 858 (1983).

Conviction affirmed, remanded for resentencing.

68. *State v. Rumsey*, 136 Ariz. 166, 665 P.2d 48 (1983), *aff'd*, 467 U.S. 203 (1984).

Sentence vacated, sentence reduced to life.

(a,b) 69. *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983).

Conviction affirmed, sentence reduced to life.

(a,b) 70. *State v. Adamson*, 136 Ariz. 250, 665 P.2d 972, *cert. denied*, 464 U.S. 865 (1983).

Conviction and sentence affirmed.

71. *State v. Smith (Roger)*, 136 Ariz. 273, 665 P.2d 995 (1983).

Conviction affirmed, remanded for resentencing.

(a,d,e) 72. *State v. Richmond*, 136 Ariz. 312, 666 P.2d 57, *cert. denied*, 464 U.S. 986 (1983).

Resentencing affirmed.

73. *State v. Leslie*, 136 Ariz. 463, 666 P.2d 1072 (1983).

Order granting new trial affirmed, remanded for new trial.

74. *State v. Hensley*, 137 Ariz. 80, 669 P.2d 58 (1983).

Conviction affirmed, remanded for resentencing.

75. *State v. Routhier*, 137 Ariz. 90, 669 P.2d 68 (1983), *cert. denied*, 464 U.S. 1073 (1984).

Conviction reversed, remanded for new trial.

76. *State v. Spoon*, 137 Ariz. 105, 669 P.2d 83 (1983).

Conviction reversed, remanded for new trial.

(a,c,d) 77. *State v. Harding*, 137 Ariz. 278, 670 P.2d 383 (1983), *cert. denied*, 465 U.S. 1013 (1984).

Conviction and sentence affirmed.

78. *State v. Jordan*, 137 Ariz. 504, 672 P.2d 169 (1983).

Sentence vacated, remanded for resentencing.

79. *State v. Cruz*, 137 Ariz. 541, 672 P.2d 470 (1983).

Conviction reversed, remanded for new trial.

(a,b,c) 80. *State v. Lambright*, 138 Ariz. 63, 673 P.2d 1 (1983), *cert. denied*, 469 U.S. 892 (1984).

Conviction and sentence affirmed.

(a,b,e) 81. *State v. Smith (Robert)*, 138 Ariz. 79, 673 P.2d 17 (1983), *cert. denied*, 465 U.S. 1074 (1984).

Conviction and sentence affirmed.

82. *State v. Vickers*, 138 Ariz. 450, 675 P.2d 710 (1983)

Conviction reversed, remanded for new trial.

(a,b,c) 83. *State v. Summerlin*, 138 Ariz. 426, 675 P.2d 686 (1983).

Conviction and sentence affirmed.

84. *State v. Walker*, 138 Ariz. 491, 675 P.2d 1310 (1984).

Conviction reversed, remanded for new trial.

(a,b,c) 85. *State v. McCall*, 139 Ariz. 147, 677 P.2d 920 (1983), *cert. denied*, 467 U.S. 1220 (1984).

Conviction and sentence affirmed.

(a,b) 86. *State v. Libberton*, 141 Ariz. 132, 685 P.2d 1284 (1984).

Conviction and sentence affirmed.

(a,b,c) 87. *State v. James*, 141 Ariz. 141, 685 P.2d 1293, *cert. denied*, 469 U.S. 990 (1984).

Conviction and sentence affirmed.

(a,c) 88. *State v. Fisher*, 141 Ariz. 227, 686 P.2d 750, *cert. denied*, 469 U.S. 1066 (1984).

Conviction and sentence affirmed.

(a,b,c) 89. *State v. Chaney*, 141 Ariz. 295, 686 P.2d 1265 (1984).

Conviction and sentence affirmed.

(a,b) 90. *State v. Harding*, 141 Ariz. 492, 687 P.2d 1247 (1984)

Conviction and sentence affirmed.

(a,d) 91. *State v. Smith (Roger)*, 141 Ariz. 510, 687 P.2d 1265 (1984).

Resentencing affirmed.

92. *State v. Emery*, 141 Ariz. 549, 688 P.2d 175 (1984).

Conviction affirmed, sentence reduced to life.

(a,c,d) 93. *State v. Villafuerte*, 142 Ariz. 323, 690 P.2d 42 (1984), *cert. denied*, 469 U.S. 1230 (1985).

Conviction and sentence affirmed.

94. *State v. Clabourne*, 142 Ariz. 355, 690 P.2d 54 (1984).

Conviction and sentence affirmed.

95. *State v. Tison (Ricky)*, 142 Ariz. 446, 690 P.2d 747 (1984), *vacated*, ___ U.S. ___, 107 S.Ct 1676, 95 L.Ed.2d 127 (1987).

Sentence affirmed.

96. *State v. Tison (Raymond)*, 142 Ariz. 454, 690 P.2d 755 (1984), *vacated*, ___ U.S. ___, 107 S.Ct 1676, 95 L.Ed.2d 127 (1987).

Sentence affirmed.

(a,b,c) 97. *State v. Gillies*, 142 Ariz. 564, 691 P.2d 1059 (1984), *cert. denied*, 470 U.S. 1059 (1985).

Resentencing affirmed.

98. *State v. Hensley*, 142 Ariz. 598, 691 P.2d 689 (1984).

Resentencing affirmed.

99. *State v. Schad*, 142 Ariz. 619, 691 P.2d 710 (1984).

Conviction reversed, remanded for new trial.

100. *State v. McMurtrey*, 143 Ariz. 71, 691 P.2d 1099 (1984).

Resentencing vacated, remanded for resentencing.

(a,b,c) 101. *State v. Carriger*, 143 Ariz. 142, 692 P.2d 991 (1984), *cert. denied*, 471 U.S. 1111 (1985).

Conviction and sentence affirmed.

102. *State v. Nash*, 143 Ariz. 392, 694 P.2d 222, *cert. denied*, 471 U.S. 1143 (1985).

Conviction and sentence affirmed.

(a,d) 103. *State v. Poland (Patrick)*, 144 Ariz. 388, 698 P.2d 183 (1985), *aff'd*, 476 U.S. 147 (1986).

Conviction and sentence affirmed.

104. *State v. Poland (Michael)*, 144 Ariz. 412, 698 P.2d 207 (1985), *aff'd*, 476 U.S. 147 (1986).

Conviction and sentence affirmed.

105. *State v. Gerlaugh*, 144 Ariz. 449, 698 P.2d 694 (1985).

Conviction and sentence affirmed.

106. *State v. Bishop*, 144 Ariz. 521, 698 P.2d 1240 (1985).

Conviction and sentence affirmed.

(a,b,c) 107. *State v. Roscoe*, 145 Ariz. 212, 700 P.2d 1312 (1984), *cert. denied*, 471 U.S. 1094 (1985).

Conviction and sentence affirmed.

(a,c) 108. *State v. Martinez-Villareal*, 145 Ariz. 441, 702 P.2d 670, *cert. denied*, 474 U.S. 975 (1985).

Conviction and sentence affirmed.

(a,b,c) 109. *State v. Bracy*, 145 Ariz. 520, 703 P.2d 464 (1985), *cert. denied*, 474 U.S. 1110 (1986).

Conviction and sentence affirmed.

110. *State v. Hooper*, 145 Ariz. 538, 703 P.2d 482 (1985), *cert. denied*, 474 U.S. 1073 (1986).

Conviction and sentence affirmed.

111. *State v. Martinez-Villareal*, 145 Ariz. 441, 702 P.2d 670 (1985).

Conviction and sentence affirmed.

(a,b,c) 112. *State v. Rossi*, 146 Ariz. 359, 706 P.2d 371 (1985).

Conviction affirmed, remanded for resentencing.

(a,d,e) 113. *State v. Smith (Bernard)*, 146 Ariz. 491, 707 P.2d 289 (1985).

Conviction and sentence affirmed.

114. *State v. Evans*, 147 Ariz. 57, 708 P.2d 738 (1985).

Sentence affirmed.

115. *State v. Tittle*, 147 Ariz. 339, 710 P.2d 449 (1985).

Conviction reversed, remanded for new trial.

(a,e) 116. *State v. Johnson*, 147 Ariz. 395, 710 P.2d 1050 (1985).

Conviction affirmed, sentence reduced to life.

(a,b,c) 117. *State v. Correll*, 148 Ariz. 468, 715 P.2d 721 (1986).

Three convictions affirmed; two sentences affirmed; one sentence reduced to life.

118. *State v. Mauro*, 149 Ariz. 24, 716 P.2d 393 (1986), *rev'd*, 481 U.S. 520 (1987).

Conviction reversed, remanded for new trial.

(a,b) 119. *State v. Castaneda*, 150 Ariz. 382, 724 P.2d 1 (1986).

Conviction and sentence affirmed.

120. *State v. McMurtrey*, 151 Ariz. 105, 726 P.2d 202 (1986), *cert. denied*, 480 U.S. 911 (1987).

Resentencing affirmed.

(a,c,d) 121. *State v. Wallace*, 151 Ariz. 362, 728 P.2d 232 (1986), *cert. denied*, 483 U.S. 1011 (1987).

Three convictions affirmed; two sentences affirmed; one sentence remanded for resentencing.

122. *State v. Fisher*, 152 Ariz. 116, 730 P.2d 825 (1986).

Denial of petition for post-conviction relief affirmed in part and reversed and remanded in part.

123. *State v. LaGrand (Karl)*, 152 Ariz. 483, 733 P.2d 1066, *cert. denied*, ___ U.S. ___, 108 S.Ct. 206, 98 L.Ed.2d 157 (1987).

Conviction and sentence affirmed.

(a,b,c) 124. *State v. LaGrand (Walter)*, 153 Ariz. 21, 734 P.2d 563, *cert. denied*, ___ U.S. ___, 108 S.Ct. 207, 98 L.Ed.2d 158 (1987).

Conviction and sentence affirmed.

125. *State v. Rossi*, 154 Ariz. 245, 741 P.2d 1223 (1987).

Conviction affirmed, remanded for resentencing.

(a,b) 126. *State v. Moorman*, 154 Ariz. 578, 744 P.2d 679 (1987).

Conviction and sentence affirmed.

127. *State v. Smith (Sylvester)*, 155 Ariz. 560, 748 P.2d 1184 (1987).

Sentence vacated, remanded for resentencing.

128. *State v. Charo*, 156 Ariz. 561, 754 P.2d 288 (1988).

Conviction reversed, remanded for new trial.

129. *State v. Arnett*, 158 Ariz. 15, 760 P.2d 1064 (1988).

Conviction and sentence affirmed.

(a,b,c) 130. *State v. Beaty*, 158 Ariz. 232, 762 P.2d 519 (1988), *cert. denied*, ___ U.S. ___, 109 S.Ct. 3200, 105 L.Ed.2d 708 (1989).

Conviction and sentence affirmed.

131. *State v. Stevens*, 158 Ariz. 595, 764 P.2d 724 (1988).

Conviction affirmed, sentence reduced to life.

132. *State v. Mauro*, 159 Ariz. 186, 766 P.2d 59 (1988).

Conviction affirmed, sentence reduced to life.

(a,b,c) 133. *State v. Vickers*, 159 Ariz. 532, 768 P.2d 1177 (1989)

Conviction and sentence affirmed.

(a,b,c) 134. *State v. Walton*, 159 Ariz. 571, 769 P.2d 1017 (1989), *cert. granted*, ___ U.S. ___, 110 S.Ct. 49, 107 L.Ed.2d 18 (1989).

Conviction and sentence affirmed.

135. *State v. McCall*, 160 Ariz. 119, 770 P.2d 1165 (1989).

Conviction and sentence affirmed.

136. *State v. Prince*, 160 Ariz. 268, 772 P.2d 1121 (1989).

Conviction affirmed, sentence reduced to life.

137. *State v. Wallace*, 160 Ariz. 424, 773 P.2d 983 (1989).

Resentencing affirmed.

138. *State v. Tison (Ricky & Raymond)*, 160 Ariz. 501, 774 P.2d 805 (1989).

Sentence vacated, remanded for resentencing.

139. *State v. Rockwell*, 161 Ariz. 5, 775 P.2d 1069 (1989).

Conviction affirmed, sentence reduced to life.

(a,b,c) 140. *State v. Fulminante*, 161 Ariz. 237, 778 P.2d 602 (1989).

Conviction reversed, remanded for new trial.

141. *State v. Romanosky*, ___ Ariz. ___, 782 P.2d 693 (1989).

Conviction reversed, remanded for new trial.

(a,c) 142. *State v. Marlow*, 47 Ariz. Adv. Rep. 37 (Nov. 9, 1989).

Conviction affirmed, sentence reduced to life.

143. *State v. Schad*, 49 Ariz. Adv. Rep. 23 (Dec. 14, 1989).

Conviction and sentence affirmed.

144. *State v. Williams*, No. 6275 (Oct. 8, 1987).

Conviction and sentence affirmed.

145. *State v. Connor*, CR-84-0264-AP/PC (Jan. 9, 1990).

Conviction affirmed, sentence reduced to life.

146. *State v. Lopez*, No. CR-87-0184-AP (Jan. 16, 1990).

Conviction affirmed, remanded for resentencing.

147. *State v. Serna*, No. CR-87-0183-AP (Jan. 23, 1990).

Conviction and sentence affirmed.

TOTALS

	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	T
Conv. & sent. aff'd.		2	4	2	2	9	9	3	10	15	11	6	4	2	5	1	85
Conv. rev'd, rem'd for new trial.		1	1	2		4		3	5	2	1	2		1	2		24
Conv. aff'd, sent. reduced to life.	1	1	1		2	1	1	1	3	1	1	1		2	3	1	20
Conv. aff'd, rem'd for resentencing.		2		3	5	1	1	1	5	1	1	1	2		2	1	26
Totals	1	6	6	7	9	15	11	8	23	19	14	10	6	5	12	3	155

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